

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

301 State House
(317) 232-9855

FISCAL IMPACT STATEMENT

LS 6761

BILL NUMBER: SB 196

DATE PREPARED: Dec 15, 2001

BILL AMENDED:

SUBJECT: Gaming on Indian lands.

FISCAL ANALYST: Jim Landers

PHONE NUMBER: 232-9869

**FUNDS AFFECTED: X GENERAL
DEDICATED
FEDERAL**

IMPACT: State & Local

Summary of Legislation: The bill prohibits the state from entering into a tribal-state compact to allow gaming on Indian lands unless: (1) the voters of the county in which the Indian lands are located have approved gaming on Indian lands in the county; and (2) the General Assembly has authorized the tribal-state compact. It also prohibits land based casinos except for land based casinos located on Indian lands under a tribal-state compact authorized by the General Assembly in a county where gaming on Indian lands has been approved by the county's voters. The bill establishes procedures for the placement of a public question concerning gaming on Indian lands on a county election ballot. The bill also requires the Department of Commerce to assess the economic development needs of an Indian tribe and communities surrounding Indian lands and to provide economic development assistance.

Effective Date: Upon passage.

Explanation of State Expenditures: The bill requires that if the United States Secretary of the Interior acquires in trust, for the benefit of an Indian tribe, land located in Indiana, the Department of Commerce (DOC) must assess the economic development needs of the Indian tribe and communities surrounding the Indian lands. The bill permits the DOC to contract with any individual or entity to perform the economic development needs assessment. The bill requires that the assessment include a list of potential economic development projects that meet the needs of the tribe and surrounding communities. The list must identify potential funding sources for the proposed projects. It also requires the DOC to host and moderate meetings between the tribe, local governments, and individuals from the surrounding communities for purposes of identifying economic development projects. The DOC also must assist the tribe in developing a plan to fund and implement the identified economic development projects. Finally, the executive director of the DOC is required to appoint a liaison to the tribe who will coordinate the DOC's efforts to assist the tribe's implementation of the economic development plan, and in obtaining for the tribe or entities locating on Indian lands economic development assistance provided by the state.

The potential cost of the needs assessment and assistance requirements is indeterminable. However, the DOC should be able to meet any demands due to these requirements given its current budget and resources. The November 1, 2001, state personnel table indicates that the Lieutenant Governor's Office has 20 vacant positions.

Explanation of State Revenues: The bill provides that the State of Indiana may not enter into a tribal-state compact to allow gaming on Indian lands unless: (1) the voters of the county in which the Indian lands are located have approved gaming on Indiana lands within the county; and (2) the General Assembly has authorized the tribal-state compact. At this time it is unclear as to the impact of these provisions given the fluidity of federal law and regulations relating to Indian gaming.

Background: The Indian Gaming Regulatory Act of 1988 (IGRA) clarified the process for tribes and states to negotiate compacts permitting Class III gambling (which includes parimutuel wagering, slot machines, and video poker) on Indian lands. The IGRA allows Indian tribes to conduct any type of Class III gambling in a state that allows such gambling as long as it conforms to the compact negotiated by the state and the Indian tribe. In many cases, mutually acceptable tribal-state compacts have been successfully negotiated. The IGRA, however, provides that an Indian tribe may sue a state for failing to negotiate or failing to negotiate in good faith. The United States Supreme Court recently ruled in the case of Seminole Tribe of Florida v. Florida (1996) that the United States Congress does not have the power to subject states to lawsuits by Indian tribes for failing to negotiate a compact. The court found that this violated the 11th amendment's guarantee of state sovereign immunity. Therefore, the provision of the IGRA that allows tribes to sue states is unenforceable.

In addition, Indian tribes have opened Class III casinos without tribal-state compacts in California, Florida, and Washington. State governments are not empowered under IGRA to act against Indian tribes if they are operating Class III casinos without a compact, as enforcement is a federal responsibility. This has led to complaints by states that the federal government is not acting aggressively to remedy these situations.

In more recent action, federal rules effective May 12, 1999, established a role for the U. S. Secretary of the Interior to intervene in cases in which a tribe and state are unable to reach a compact, and the courts conclude that the state's use of its 11th amendment immunity to suit is controlling. Upon publication of these rules to bypass state-tribal compacts on April 12, 1999, Florida and Alabama filed suit in federal court asserting that the Interior Secretary did not have the authority to approve a compact for Class III gaming without an agreement between the state and a tribe. At that time, former Interior Secretary Bruce Babbitt authorized tribes in Florida, Nebraska, and Washington to use this rule to develop compacts. On October 12, 1999, however, former Secretary Babbitt agreed not to publish final procedures for tribes to initiate Class III gaming under the rules until a federal court had ruled on them. The federal court has not yet reached a decision in the case involving Florida and Alabama. However, current Interior Secretary Gale Norton has indicated her willingness to review the gaming regulations before publishing final procedures.

Proposed rules regarding how lands are taken into trust for individual Indians and Indian tribes were published at the same time as the Class III gaming rules - April 12, 1999. These rules could potentially be utilized to award trust land status to tribal property for purposes of siting gaming establishments without state or local involvement. On January 16, 2001, the Interior Department published final regulations governing how land would be taken into trust, with an effective date of February 15, 2001. The effective date of these regulations, however, was delayed until April 16, 2001, by virtue of President Bush's regulatory review plan addressing regulatory actions of the Clinton Administration. Secretary Norton has further delayed the effective date to August 16, 2001 to allow the Interior Department additional time to examine these

regulations. On November 8, 2001, Secretary Norton withdrew the final regulations governing the taking of land into trust.

Explanation of Local Expenditures: The bill provides that a referendum may be held on the question of gaming on Indian lands in a county containing Indian lands. The election on the question of allowing gaming on Indian lands must be held during a general election. As a result, this provision should result in no fiscal impact.

Explanation of Local Revenues:

State Agencies Affected: Department of Commerce; Governor's Office; General Assembly.

Local Agencies Affected: Counties containing Indian lands.

Information Sources: National Governors Association Online (www.nga.org). Final Report, National Gambling Impact Study Commission, June 18, 1999.